

NATIONAL POWER CORPORATION, PETITIONER, VS. HEIRS OF NOBLE CASIONAN, RESPONDENTS.

G.R. No. 165969. November 27, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

PETITIONING power company pleads for mitigation of awarded damages on ground of contributory negligence. But is the victim in this case partly to blame for his electrocution and eventual demise?

This is a review on certiorari of the Decision[1] of the Court of Appeals (CA) which found the National Power Corporation (NPC) liable for damages for the death of Noble Casionan due to electrocution from the company's high tension transmission lines.

The Facts

The facts, as found by the trial court are as follows:

Respondents are the parents of Noble Casionan, 19 years old at the time of the incident that claimed his life on June 27, 1995. He would have turned 20 years of age on November 9 of that year. Noble was originally from Cervantes, Ilocos Sur. He worked as a pocket miner in Dalicno, Ampucao, Itogon, Benguet.

A trail leading to Sangilo, Itogon, existed in Dalicno and this trail was regularly used by members of the community. Sometime in the 1970's, petitioner NPC installed high-tension electrical transmission lines of 69 kilovolts (KV) traversing the trail. Eventually, some of the transmission lines sagged and dangled reducing their distance from the ground to only about eight to ten feet. This posed a great threat to passersby who were exposed to the danger of electrocution especially during the wet season.

As early as 1991, the leaders of Ampucao, Itogon made verbal and written requests for NPC to institute safety measures to protect users of the trail from their high tension wires. On June 18, 1991 and February 11, 1993, Pablo and Pedro Ngaosie, elders of the community, wrote Engr. Paterno Banayot, Area Manager of NPC, to make immediate and appropriate repairs of the high tension wires. They reiterated the danger it posed to small-scale miners especially during the wet season. They related an incident where one boy was nearly electrocuted.

In a letter dated March 1, 1995, Engr. Banayot informed Itogon Mayor Cresencio Pacalso that NPC had installed nine additional poles on their Beckel-Philex 60 KV line. They likewise identified a possible rerouting scheme with an estimated total cost of 1.7 million pesos to improve the distance from its deteriorating lines to the ground.

On June 27, 1995, Noble and his co-pocket miner, Melchor Jimenez, were at Dalicno. They cut two bamboo poles for their pocket mining. One was 18 to 19 feet long and the other was 14 feet long. Each man carried one pole horizontally on his shoulder: Noble carried the shorter pole while Melchor carried the longer pole. Noble walked ahead as both passed through the trail underneath the NPC high tension transmission lines on their way to their work place.

As Noble was going uphill and turning left on a curve, the tip of the bamboo pole he was carrying touched one of the dangling high tension wires. Melchor, who was walking behind him, narrated that he heard a buzzing sound when the tip of Noble's pole touched the wire for only about one or two seconds. Thereafter, he saw Noble fall to the ground. Melchor rushed to Noble and shook him but the latter was already dead. Their co-workers heard Melchor's shout for help and together they brought the body of Noble to their camp.

A post-mortem examination by Dra. Ignacia Reyes Ciriaco, Municipal Health Officer of Itogon, Benguet, determined the cause of death to be cardiac arrest, secondary to ventricular fibrillation, secondary to electrocution.[2] She also observed a small burned area in the middle right finger of the victim.

Police investigators who visited the site of the incident confirmed that portions of the high tension wires above the trail hung very low, just about eight to ten feet above the ground. They noted that the residents, school children, and pocket miners usually used the trail and had to pass directly underneath the wires. The trail was the only viable way since the other side was a precipice. In addition, they did not see any danger warning signs installed in the trail.

The elders and leaders of the community, through Mayor Cresencio Pacalso, informed the General Manager of NPC in Itogon of the incident. After learning of the electrocution, NPC repaired the dangling and sagging transmission lines and put up warning signs around the area.

Consequently, the heirs of the deceased Noble filed a claim for damages against the NPC before the Regional Trial Court (RTC) in Benguet. In its answer, NPC denied being negligent in maintaining the safety of the high tension transmission lines. It averred that there were danger and warning signs installed but these were stolen by children. Excavations were also made to increase the necessary clearance from the ground to about 17 to 18 feet but some towers or poles sank due to pocket mining in the area.

At the trial, NPC witnesses testified that the cause of death could not have been electrocution because the victim did not suffer extensive burns despite the strong 69 KV carried by the transmission lines. NPC argued that if Noble did die by electrocution, it was due to his own negligence. The company counter-claimed for attorney's fees and cost of litigation.

RTC Disposition

On February 17, 1998, the RTC decided in favor of respondents. The fallo of its decision reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant NPC as follows:

- Declaring defendant NPC guilty of Negligence (Quasi-Delict) in connection with the death of Noble Casionan;
- Ordering NPC as a consequence of its negligence, to pay the plaintiffs Jose and Linda Casionan, as heirs of the deceased, Noble Casionan, the following Damages:
 - P50,000.00 as indemnity for the death of their son Noble Casionan;
 - P100,000.00 as moral damages;
 - P50,000.00 as exemplary damages;
 - P52,277.50 as actual damages incurred for the expenses of burial and wake in connection with the death of Noble Casionan;
 - P720,000.00 as the loss of unearned income; and

- P20,000.00 as attorney's fees and the cost of suit; and
- Dismissing the counter claim of the NPC for lack of merit.[3]

The RTC gave more credence to the testimony of witnesses for respondents than those of NPC who were not actually present at the time of the incident. The trial court observed that witnesses for NPC were biased witnesses because they were all employed by the company, except for the witness from the Department of Environment and Natural Resources (DENR). The RTC found:

Melchor Jimenez was very vivid in his account. He declared that he and Noble Casionan cut two bamboo poles, one 14 feet and the other about 18 feet. The shorter bamboo pole was carried by Noble Casionan and the longer bamboo pole was carried by him. And they walked along the trail underneath the transmission lines. He was following Noble Casionan. And when they were going uphill in the trail and Noble Casionan was to turn left in a curve, the bamboo pole of Casionan swung around and its tip at the back touched for one or two seconds or for a split moment the transmission line that was dangling and a buzzing sound was heard. And Casionan immediately fell dead and simply stopped breathing. What better account would there be than this? Melchor Jimenez was an eye witness as to how it all happened.[4] (Emphasis added)

The RTC ruled that the negligence of NPC in maintaining the high-tension wires was established by preponderance of evidence. On this score, the RTC opined:

- On the matter of whether plaintiffs have a cause of action against defendant NPC, obviously, they would have. x x x This negligence of the NPC was well established and cannot be denied because previous to this incident, the attention of NPC has already been called by several requests and demands in 1991, 1993 and 1995 by elders and leaders of the community in the area to the fact that their transmission lines were dangling and sagging and the clearance thereof from the line to the ground was only 8 to 10 feet and not within the standard clearance of 18 to 20 feet but no safety measures were taken. They did not even put danger and warning signs so as to warn persons passing underneath.[5] (Emphasis added)

Disagreeing with the ruling of the trial court, NPC elevated the case to the CA. In its appeal, it argued that the RTC erred in ruling that NPC was liable for Noble's death. Further, even assuming that Noble died of electrocution, the RTC erred in not finding that he was guilty of contributory negligence and in awarding excessive damages.

CA Disposition

On June 30, 2004, the CA promulgated its decision, disposing as follows:

WHEREFORE, the appealed Decision is hereby AFFIRMED, with the MODIFICATION that the amount of moral damages is REDUCED to Fifty Thousand Pesos (P50,000.00); and the award of attorney's fees in the sum of Twenty Thousand Pesos (P20,000.00) is DELETED.[6]

The CA sustained the findings of fact of the trial court but reduced the award of moral damages from P100,000.00 to P50,000.00. The CA further disallowed the award of attorney's fees because the reason for the award was not expressly stated in the body of the decision.

Issues

The following issues are presented for Our consideration: (i) Whether the award for damages should be deleted in view of the contributory negligence of the victim; and (ii) Whether the award for unearned income, exemplary, and moral damages should be deleted for lack of factual and legal bases.[7]Our Ruling

I

That the victim Noble died from being electrocuted by the high-tension transmission wires of petitioner is not contested by petitioner. We are, however, asked to delete or mitigate the damages awarded by the trial and appellate courts in view of what petitioner alleges to be contributory negligence on the part of the victim.

As a rule, only questions of law may be entertained on appeal by certiorari under Rule 45. The finding of negligence on the part of petitioner by the trial court and affirmed by the CA is a question of fact which We cannot pass upon since it would entail going into factual matters on which the finding of negligence was based.[8] Corollary to this, the finding by both courts of the lack of contributory negligence on the part of the victim is a factual issue which is deemed conclusive upon this Court absent any compelling reason for Us to rule otherwise.

But even if We walk the extra mile, the finding of liability on the part of petitioner must stay.

Petitioner contends that the mere presence of the high tension wires above the trail did not cause the victim's death. Instead, it was Noble's negligent carrying of the bamboo pole that caused his death. It insists that Noble was negligent when he allowed the bamboo pole he was carrying to touch the high tension wires. This is especially true because other people traversing the trail have not been similarly electrocuted.

Petitioner's contentions are absurd.

The sagging high tension wires were an accident waiting to happen. As established during trial, the lines were sagging around 8 to 10 feet in violation of the required distance of 18 to 20 feet. If the transmission lines were properly maintained by petitioner, the bamboo pole carried by Noble would not have touched the wires. He would not have been electrocuted.

Petitioner cannot excuse itself from its failure to properly maintain the wires by attributing negligence to the victim. In *Ma-ao Sugar Central Co., Inc. v. Court of Appeals*,[9] this Court held that the responsibility of maintaining the rails for the purpose of preventing derailment accidents belonged to the company. The company should not have been negligent in ascertaining that the rails were fully connected than to wait until a life was lost due to an accident. Said the Court:

In this petition, the respondent court is faulted for finding the petitioner guilty of negligence notwithstanding its defense of due diligence under Article 2176 of the Civil Code and for disallowing the deductions made by the trial court.

Investigation of the accident revealed that the derailment of the locomotive was caused by protruding rails which had come loose because they were not connected and fixed in place by fish plates. Fish plates are described as strips of iron 8" to 12" long and 3 ½" thick which are attached to the rails by 4 bolts, two on each side, to keep the rails aligned. Although they could be removed only with special equipment, the fish plates that should have kept the rails aligned could not be found at the scene of the accident.

There is no question that the maintenance of the rails, for the purpose, inter alia, of preventing derailments, was the responsibility of the petitioner, and that this responsibility was not discharged. According to Jose Reyes, its own witness, who was in charge of the control and supervision of its train operations, cases of derailment in the milling district were frequent and there were even times when such derailments were reported every hour. The petitioner should therefore have taken more prudent steps to prevent such accidents instead of waiting until a life was finally lost because of its negligence.[10]

Moreover, We find no contributory negligence on Noble's part.

Negligence is the failure to observe, for the protection of the interest of another person, that degree of care,

precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.[11] On the other hand, contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard which he is required to conform for his own protection.[12] There is contributory negligence when the party's act showed lack of ordinary care and foresight that such act could cause him harm or put his life in danger.[13] It is an act or omission amounting to want of ordinary care on the part of the person injured which, concurring with the defendant's negligence, is the proximate cause of the injury.[14]

The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence.[15] If indeed there was contributory negligence on the part of the victim, then it is proper to reduce the award for damages. This is in consonance with the Civil Code provision that liability will be mitigated in consideration of the contributory negligence of the injured party. Article 2179 of the Civil Code is explicit on this score:

When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

In *Ma-ao Sugar Central*, it was held that to hold a person as having contributed to his injuries, it must be shown that he performed an act that brought about his injuries in disregard of warnings or signs on an impending danger to health and body. This Court held then that the victim was not guilty of contributory negligence as there was no showing that the caboose where he was riding was a dangerous place and that he recklessly dared to stay there despite warnings or signs of impending danger.[16]

In this case, the trail where Noble was electrocuted was regularly used by members of the community. There were no warning signs to inform passersby of the impending danger to their lives should they accidentally touch the high tension wires. Also, the trail was the only viable way from Dalicon to Itogon. Hence, Noble should not be faulted for simply doing what was ordinary routine to other workers in the area.

Petitioner further faults the victim in engaging in pocket mining, which is prohibited by the DENR in the area.

In *Añonuevo v. Court of Appeals*,[17] this Court ruled that the violation of a statute is not sufficient to hold that the violation was the proximate cause of the injury, unless the very injury that happened was precisely what was intended to be prevented by the statute. In said case, the allegation of contributory negligence on the part of the injured party who violated traffic regulations when he failed to register his bicycle or install safety gadgets thereon was struck down. We quote:

x x x The bare fact that Villagrancia was violating a municipal ordinance at the time of the accident may have sufficiently established some degree of negligence on his part, but such negligence is without legal consequence unless it is shown that it was a contributing cause of the injury. If anything at all, it is but indicative of Villagrancia's failure in fulfilling his obligation to the municipal government, which would then be the proper party to initiate corrective action as a result. But such failure alone is not determinative of Villagrancia's negligence in relation to the accident. Negligence is relative or comparative, dependent upon the situation of the parties and the degree of care and vigilance which the particular circumstances reasonably require. To determine if Villagrancia was negligent, it is not sufficient to rely solely on the violations of the municipal ordinance, but imperative to examine Villagrancia's behavior in relation to the contemporaneous circumstances of the accident.

x x x x

Under American case law, the failures imputed on Villagracia are not grievous enough so as to negate monetary relief. In the absence of statutory requirement, one is not negligent as a matter of law for failing to equip a horn, bell, or other warning device onto a bicycle. In most cases, the absence of proper lights on a bicycle does not constitute negligence as a matter of law but is a question for the jury whether the absence of proper lights played a causal part in producing a collision with a motorist. The absence of proper lights on a bicycle at night, as required by statute or ordinance, may constitute negligence barring or diminishing recovery if the bicyclist is struck by a motorist as long as the absence of such lights was a proximate cause of the collision; however, the absence of such lights will not preclude or diminish recovery if the scene of the accident was well illuminated by street lights, if substitute lights were present which clearly rendered the bicyclist visible, if the motorist saw the bicycle in spite of the absence of lights thereon, or if the motorist would have been unable to see the bicycle even if it had been equipped with lights. A bicycle equipped with defective or ineffective brakes may support a finding of negligence barring or diminishing recovery by an injured bicyclist where such condition was a contributing cause of the accident.

The above doctrines reveal a common thread. The failure of the bicycle owner to comply with accepted safety practices, whether or not imposed by ordinance or statute, is not sufficient to negate or mitigate recovery unless a causal connection is established between such failure and the injury sustained. The principle likewise finds affirmation in *Sanitary Steam*, wherein we declared that the violation of a traffic statute must be shown as the proximate cause of the injury, or that it substantially contributed thereto. *Añonuevo* had the burden of clearly proving that the alleged negligence of Villagracia was the proximate or contributory cause of the latter's injury.[18] (Emphasis added)

That the pocket miners were unlicensed was not a justification for petitioner to leave their transmission lines dangling. We quote with approval the observation of the RTC on this matter:

The claim of NPC that the pocket miners have no right to operate within the area of Dalicno, Itogon, Benguet as there was no permit issued by DENR is beside the point. The fact is that there were not only pocket miners but also there were many residents in the area of Dalicno, Ampucao, Itogon, Benguet using the trail. These residents were using this trail underneath the transmission lines x x x. They were using this trail even before the transmission lines were installed in the 1970's by NPC. The pocket miners, although they have no permit to do pocket mining in the area, are also human beings who have to eke out a living in the only way they know how. The fact that they were not issued a permit by the DENR to do pocket mining is no justification for NPC to simply leave their transmission lines dangling or hanging 8 to 10 feet above the ground posing danger to the life and limb of everyone in said community. x x x[19] (Emphasis added)

In sum, the victim was not guilty of contributory negligence. Hence, petitioner is not entitled to a mitigation of its liability.

II

We now determine the propriety of the awards for loss of unearned income, moral, and exemplary damages.

From the testimony of the victim's mother, it was duly established during trial that he was earning P3,000.00 a month. To determine the compensable amount of lost earnings, We consider (1) the number of years for which the victim would otherwise have lived (life expectancy); and (2) the rate of loss sustained by the heirs of the deceased. Life expectancy is computed by applying the formula $(2/3 \times [80 - \text{age at death}])$ adopted in the American Expectancy Table of Mortality or the Actuarial Combined Experience Table of Mortality. The second factor is computed by multiplying the life expectancy by the net earnings of the deceased, i.e., the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. The net earning is ordinarily computed at fifty percent (50%) of the gross earnings. Thus, the formula used by this Court in computing loss of earning capacity is: $\text{Net Earning Capacity} = [2/3 \times (80 - \text{age at time of death}) \times (\text{gross}$

annual income - reasonable and necessary living expenses)].[20]

We sustain the trial court computation of unearned income of the victim:

x x x the loss of his unearned income can be computed as follows: two-thirds of 80 years, minus 20 years, times P36,000.00 per year, equals P1,440,000.00. This is because Noble Casionan, at the time of his death, was 20 years old and was healthy and strong. And, therefore, his life expectancy would normally reach up to 80 years old in accordance with the above formula illustrated in the aforesaid cases. Thus, Noble Casionan had 60 more years life expectancy since he was 20 years old at the time of his death on June 27, 1995. Two-thirds of 60 years times P36,000.00 since he was earning about P3,000.00 a month of P36,000.00 a year would be P1,440,000.00.

However, in determining the unearned income, the basic concern is to determine the damages sustained by the heirs or dependents of the deceased Casionan. And here, the damages consist not of the full amount of his earnings but the support they would have received from the deceased had he not died as a consequence of the unlawful act of the NPC. x x x The amount recoverable is not the loss of the entire earnings but the loss of that portion of the earnings which the heirs would have received as support. Hence, from the amount of P1,440,000.00, a reasonable amount for the necessary expenses of Noble Casionan had he lived would be deducted. Following the ruling in *People v. Quilaton*, 205 SCRA 279, the Court deems that 50 percent of the gross earnings of the deceased of P1,440,000.00 should be deducted for his necessary expenses had he lived, thus leaving the other half of about P720,000.00 as the net earnings that would have gone for the support of his heirs. This is the unearned income of which the heirs were deprived of.[21]

In quasi delicts, exemplary damages are awarded where the offender was guilty of gross negligence.[22] Gross negligence has been defined to be the want or absence of even slight care or diligence as to amount to a reckless disregard of the safety of person or property. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[23]

Petitioner demonstrated its disregard for the safety of the members of the community of Dalicno who used the trail regularly when it failed to address the sagging high tension wires despite numerous previous requests and warnings. It only exerted efforts to rectify the danger it posed after a death from electrocution already occurred. Gross negligence was thus apparent, warranting the award of exemplary damages.

As to the award of moral damages, We sustain the CA reduction of the award. Moral damages are designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. It is not meant to enrich the complainant but to enable the injured party to obtain means to obviate the moral suffering experience. Trial courts should guard against the award of exorbitant damages lest they be accused of prejudice or corruption in their decision making.[24] We find that the CA correctly reduced the award from P100,000.00 to P50,000.00.

As for the award for attorney's fees, well-settled is the rule that the reason for the award must be discussed in the text of the court's decision and not only in the dispositive portion.[25] Except for the fallo, a discussion on the reason for the award for attorney's fees was not included by the RTC in its decision. The CA thus correctly disallowed it on appeal.

WHREFORE, the petition is DENIED and the appealed decision of the Court of Appeals AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

- [1] Rollo, pp. 46-58. CA-G.R. CV No. 59614. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Roberto A. Barrios and Mariano C. Del Castillo, concurring.
- [2] Id. at 83.
- [3] Id. at 98.
- [4] Id. at 90.
- [5] Id. at 93.
- [6] Id. at 57.
- [7] Id. at 30.
- [8] *Lambert v. Heirs of Ray Castillon*, G.R. No. 160709, February 23, 2005, 452 SCRA 285.
- [9] G.R. No. 83491, August 27, 1990, 189 SCRA 88.
- [10] Id. at 91.
- [11] *Jarco Marketing Corporation v. Court of Appeals*, 378 Phil. 991, 1002-1003 (1999). (Citations omitted.)
- [12] *Estacion v. Bernardo*, G.R. No. 144723, February 27, 2006, 483 SCRA 222, 234.
- [13] Id.
- [14] *Ma-ao Sugar Central Co., Inc. v. Court of Appeals*, supra note 9, at 93.
- [15] *Syki v. Begasa*, 460 Phil. 381, 390-391 (2003).
- [16] *Ma-ao Sugar Central Co., Inc. v. Court of Appeals*, supra note 9.
- [17] G.R. No. 130003, October 20, 2004, 441 SCRA 24.
- [18] *Añonuevo v. Court of Appeals*, id. at 40-43. (Citations omitted.)
- [19] Rollo, p. 95.
- [20] *Lambert v. Heirs of Ray Castillon*, supra note 8, at 294; *Pleyto v. Lomboy*, G.R. No. 148737, June 16, 2004, 432 SCRA 329, 340-341.
- [21] Rollo, pp. 96-98.
- [22] Civil Code of the Philippines, Art. 2231.
- [23] *Metro Transit Organization, Inc. v. National Labor Relations Commission*, 331 Phil. 633, 641 (1996). (Citations omitted.)
- [24] *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 361 Phil. 499, 530 (1999).
- [25] *Lambert v. Heirs of Ray Castillon*, supra note 8, at 297.

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